

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-857529
AND ALL OTHER SEAMAN DOCUMENTS
Issued to: TAMIR J. DEYOUB

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1608

TAMIR J. DEYOUB

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 31 August 1966, an Examiner of the United States Coast Guard at Detroit, Michigan, suspended Appellant's seaman documents for six months outright upon finding him guilty of misconduct. The specification found proved alleges that while serving as an oiler on board the United States SS MORNING LIGHT under authority of the document above described, on or about 20 September 1965, Appellant wrongfully deserted said vessel at a foreign port. A second specification of wrongful failure to join said vessel at a foreign port on or about 20 September 1965 was found not proved (a lesser included offense).

At the hearing, Appellant elected to act as his own counsel. Appellant entered a plea of guilty to the charge and the second specification and not guilty to the first specification.

The Investigating Officer introduced a Certificate of Shipping Articles showing that the person charged signed aboard the MORNING LIGHT on 6 July 1965 for a voyage which terminated at Los Angeles, California, on 12 October 1965 and left the ship at Naha, Okinawa, on 20 September 1965. The Investigating Officer also introduced two certified extracts from the Official Log Book concerning Appellant's failure to join the ship and the charge of desertion by the Master.

In defense, Appellant testified that he went ashore to take some old clothes and a radio to some friends; when he could not find them, he started to drink and blacked out; and consequently, he missed the ship. He did not intend to desert, but he did not have the money to fly to Japan and catch the ship there. When he did arrive in Yokohama, the ship had gone.

After the hearing, the Examiner rendered a written decision in which he concluded that the charge and the specification of

desertion at a foreign port had been proved. The Examiner then served a written order on Appellant suspending all documents, issued to Appellant, for a period of six months outright.

The entire decision was served on 15 September 1966. Appeal was timely filed on 21 September 1966.

FINDINGS OF FACT

On or about 20 September 1965, Appellant was serving as an oiler on board the United States SS MORNING LIGHT and acting under authority of his document while the ship was in the port of Naha, Okinawa. At 1600 he went ashore carrying a case of personal belongings and a radio. The ship was scheduled to depart at 2400 but Appellant did not return. The following day he went to the local agent of the steamship company and requested a voucher. Upon being informed that he could not obtain any money, he wired the Master to leave the rest of his clothes in Yokohama because he did not know whether he would make the ship.

The Master received a cable from the agent in Naha dated 22 September 1965 to the effect that Appellant had admitted he had no intention to rejoin. The Master declared Appellant as a deserter to the American Consul, Yokahama, on 24 September. The cable and the Master's actions were entered in the Official Log book and the entry witnessed by the Chief Engineer. Appellant had obtained a passport visa in March 1965 with the avowed intention of visiting Japan. Since he had a passport visa, the Immigration authorities in Naha permitted him to take the ferry to Japan the following day. He stayed in Yokohama two weeks and then shipped on a shuttle run in the Far East for four months.

Appellant's prior record consists of an admonition issued on 28 May 1966 for absence without leave.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the charge and specification have not been proved. Also, Appellant's interests were prejudiced because he was not furnished counsel by the Coast Guard free of charge.

APPEARANCE: Appellant, pro se.

OPINION

Appellant, in an attempt to show lack of intent to desert, makes a point of the value of the clothing left on board and the

wages which would be forfeited. He offered to bring a list of the clothing turned over to the Coast Guard by the Master, but noted that a valuable coat and suitcase were not included in the list. However, he stated that he knew of many seamen who stayed away from their vessels without receiving any such punishment.

It appears that Appellant did not realize the difference in the effect of failure to join and the consequences of desertion, and took advantage of the opportunity to leave the ship during the final hours of the vessel's stay in port, knowing that the ship was scheduled to return to the United States in the near future. He had obtained a passport visa with the intention of visiting Japan. He expected the local agent to issue him a voucher for wages due and the Master to leave his clothes in Yokahama. The unqualified statement of the local agent stands against Appellant's denial of his intention to desert. Appellant's testimony on his own behalf is not clear as to any positive actions which indicated an intention to rejoin the ship.

The second contention in the appeal concerns Appellant's right to counsel. The record shows that he was advised of his right to be represented by counsel when the charge and specifications were served on 22 August 1966 and again at the beginning of the hearing on 26 August 1966. When he indicated that he expected counsel to be furnished by the Coast Guard free of charge, the Examiner advised that it was his duty to make the decision on the charge and not to act as counsel, but he offered to adjourn the hearing so that Appellant could get a union representative or someone else. Appellant decided to proceed without counsel. Appellant was also advised that the hearing was an administrative hearing which is not penal in nature but is directed against his right to hold a seaman's document. The statute and regulations governing such proceeding do not require the Coast Guard to provide counsel.

CONCLUSION

The log entries constitute substantial evidence of the charge and specification which is not refuted by the testimony of the Appellant.

ORDER

The order of the Examiner dated at Detroit, Michigan, on 31 August 1966 is AFFIRMED.

P. E. TRIMBLE
Vice Admiral, U. S. Coast Guard
Acting Commandant

Signed at Washington, D. C., this 10th day of May 1967.

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COUNSEL

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